IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.19509 of 2007

For Approval and Signature:
HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	**NO**
2	To be referred to the Reporter or not ?	**NO**
3	Whether their Lordships wish to see the fair copy of the judgment ?	**NO**
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?	**NO**
5	Whether it is to be circulated to the civil judge ?	**NO**

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MINOR MITUL MANILAL PATEL - Petitioner(s)
Versus
THE STATE OF GUJARAT & 4 - Respondent(s)

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Appearance :
MR PARESH UPADHYAY for Petitioner(s) : 1,
MR SHIVANG SHUKLA, AGP for Respondent(s) : 1 - 4,
NOTICE SERVED BY DS for Respondent(s) : 5.

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA
Date : 27/09/2007
ORAL JUDGMENT

(1) RULE. The petition is taken up for final hearing and disposal today considering the view that the Court is inclined to take. Learned Assistant Government Pleader is

directed to waive the service of Rule.

(2) The petitioner has sought a writ to quash and set aside the impugned punishment order dated 26/31.07.2007 (Annexure-A) made by respondent No.4. The petitioner is a student of Diploma in Civil Engineering with respondent No.5-Institute. The petitioner appeared for the 5th semester examination in May / June 2007. On 27.06.2007 the petitioner was issued a show cause notice wherein it was alleged that the petitioner had indulged in copying in the examination held on 14.06.2007 and why action should not be initiated against the petitioner. The show cause notice also referred to Rule No.15 and further stated that the petitioner was liable to have his result cancelled and also debarred from appearing at further one to four examinations and why the petitioner should not be imposed such punishment. The petitioner was asked to remain present for personal hearing on 06.07.2007.

(3) The petitioner appeared on 06.07.2007 and submitted a reply whereunder the past academic career of the petitioner was referred to and it was stated that the petitioner has not indulged in any form of malpractice or misconduct and hence, no punishment be inflicted.

(4) The grievance of the petitioner is that the impugned order has been made without the respondent authority having established that the petitioner had indulged in any such activity as alleged by the respondent authority. That on the date of hearing, namely, 06.07.2007, the petitioner was called upon to fill up a printed prescribed form and that even in the said form the petitioner had denied having indulged in any such malpractice. Lastly, it is contended that the impugned order is accompanied by a chart and the name of the petitioner appears at Entry No.285 but the impugned order nowhere

specifies any details, much less any reasons as to why the punishment is imposed on the petitioner. That the petitioner has not been heard on the quantum of punishment also. This fact, according to the learned advocate, assumes importance, because subsequent to the filing of the petition the quantum of the punishment has been reduced by the respondent authority vide order dated 31.08.2007. It was, therefore, urged that the impugned order be quashed and set aside.

(5) Upon issuance of notice, the respondent authorities have put in appearance and filed affidavit-in-reply dated 21.08.2007. Though various averments have been made in the affidavit-in-reply, for the reasons that follow hereinafter, the Court is not inclined to go into those reasons. The learned Assistant Government Pleader has vehemently submitted that the conduct of the petitioner does not entitle the petitioner to seek equity

and that this was a clear case of mass-copying. That the petitioner has been found to be indulging in such malpractice by an Examination Sub-Committee of three persons, who are qualified and experts in the field. Therefore, the Court should not interfere in the impugned order. That the petitioner was given adequate opportunity of hearing. The petitioner has availed of such opportunity. The petitioner has been heard by the Examination Sub-Committee. Thereafter, on the recommendation of the Examination Sub-Committee the decision to impose punishment has been taken by the respondent authority. He, therefore, submitted that this Court should not entertain the petition considering the fact that the petitioner has been found to be indulging in malpractice and appropriate punishment has been imposed after following the prescribed procedure and granting an opportunity of hearing to the petitioner.

(6) The petition is required to be allowed on a very short ground, namely, total non-application of mind qua the respondent authority. If one goes to the show cause notice dated 27.06.2007 it is apparent that the same has been issued in a printed form and, as accepted, some of the irrelevant portion of the printed notice has not been scored off. It is not to say that a printed format can never be used by an authority. However, on application of mind the authority issuing the show cause notice is required to retain the relevant portion of the notice as may be applicable to the fact situation of a particular case while deleting / striking off the irrelevant portion. The form of the show cause notice itself indicates that there could be various fact situations in which the show cause notice can be issued. The necessary exercise of retaining only the relevant while deleting the irrelevant having not been carried out by the authority it is apparent

that the petitioner is prevented from tendering a correct and specific reply qua the charges that may be alleged against the petitioner. Hence, the general over all denial in response to the show cause notice vide communication dated 06.07.2007. The petitioner could not have done any better in absence of specific particulars as to the charge / allegations leveled against the petitioner. The show cause notice mentions the date of examination and thereafter goes on to record that during course of examination mutual writing has been recovered from the petitioner. The words used in Gujarati are '*Aras Paras Lakhan*'. It is impossible to comprehend how does one recover such a material from a person. The explanation tendered by the learned Assistant Government Pleader that it is a case of mass-copying and this fact was known to the petitioner cannot be accepted. The show cause notice has to be to the point and specific in details and

cannot be vague and general.

(7) When one comes to the impugned order the fact of the entire exercise being mechanical and without application of mind stands established. The order only says by way of a forwarding communication that in cases of malpractice noted during the diploma examinations in the month of May 2007, punishment is imposed as per attached statement. The annexed statement has the following columns – Case No., Name of the Institution / Center, Seat No. / Registration No., Name of the Student, Subject, and Punishment Imposed by the Examination Committee. There is nothing, either in the order in the form of forwarding communication or the statement, which will reflect the reasons which have weighed with the authority or the Examination Committee as to why – (1) the petitioner is held guilty; AND (2) why the particular punishment is imposed. The

submission on behalf of the respondent authorities that the petitioner was heard by the Examination Sub-Committee and after considering the entire material appropriate punishment as prescribed by the relevant Government Resolution has been imposed cannot be accepted. The position in law is well settled. An order has to reflect the reasons, howsoever brief, as to why the explanation tendered by the delinquent is not acceptable, and why and how a particular quantum of punishment has been arrived at before imposing the punishment. The impugned order, if one can term the same to be an order, is entirely bereft of this basic requirement in law and cannot be sustained.

(8) The authority cannot be permitted to supply reasons subsequently. The respondent authority has sought justification of the impugned order by making various averments in the affidavit-in-reply. This is not permissible in law. The

order itself has to contain reasons.

(9) At the same time it is always open to the respondent authorities to initiate fresh action in accordance with law from the stage of show cause notice. However, this is subject to caveat that, if any fresh action is to be initiated by the respondent authorities the same shall be initiated not later than 10 (ten) days from today, with a further rider that if such fresh action is initiated, the same shall be completed within a period of 03 (three) weeks from the date of initiation.

(10) Accordingly, subject to the aforesaid directions, the petition is allowed, the impugned order dated 26/31.07.2007 is hereby quashed and set aside only to the extent it is applicable to the case of the petitioner. Rule made absolute. There shall be no order as to costs.

Sd/-
[D.A. MEHTA, J]

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Bhavesh*